

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

BARRINGTON EDUCATION ASSOCIATION,
Affiliated with NHEA/NEA

v.

BARRINGTON SCHOOL BOARD

CASE NO. T-0298:2

DECISION No. 80020

APPEARANCES

Representing the Education Association:
Anne Richmond, Esquire

Representing the School Board:
Bradley Kidder, Esquire

Also in attendance:

Barry L. Clough, Supt. SUA #44
Gail Kinney, School Board Member
Rachel Millette, School Board Member
Lee Mason, Barrington Middle School
Robert Smolen, " Elementary School
Mark Greenwood, BTA/NHEA

BACKGROUND

This case was discussed in decisions No. 79018 and 80002. Additional questions and issues were raised concerning this matter before the Public Employee Labor Relations Board by the NHEA/NEA requesting that the discharged teachers in this case, Mark Greenwood and Constance Parsons, ordered by the Board reinstated, receive back pay for the period during which they have not been employed by the Board, at least in amounts equal to that which they have received from other employment which was less than their normal pay as teachers. In addition, the Barrington School Board raised the issues of whether an offer of employment made to Mark Greenwood following the earlier order of this Board and the enforcement of that order by the Strafford County Superior Court had been accepted, rejected or disregarded by Greenwood and, in addition, whether Constance Parsons had sought to return to employment with the Barrington School Board.

A hearing was held by the Board at its offices on February 26, 1980. The issues framed at the hearing were consistent with those discussed above, namely:

1. Did the Barrington School Board make an offer to re-employ the teachers, which the teachers refused to accept?
2. Are the teachers owed back pay and if so, for what periods and in what amounts?

FINDINGS OF FACT AND RULINGS OF LAW

It was established at the hearing that Barry L. Clough, Superintendent of Schools, wrote to Mark Greenwood on December 12, 1979 indicating that on December 17 he would comply with the Strafford County Superior Court order and recommend to the Barrington School Board that Greenwood be reinstated. In addition, all references to non-renewal and annual evaluation dated March 14, 1979 were to be removed from the personnel file in accordance with the order of this Board and the court order. That letter indicated that subsequent to the Board meeting contracts would be typed for the signature of the teacher. Thereafter, on December 28, 1979, an additional letter from Barry Clough to Mark Greenwood was sent offering to employ him at a salary rate of \$9,200 plus \$400 for a Masters Degree for the 1979-1980 school year. This letter instructed Greenwood to report on January 2, 1980 to the supervising Principal of the Barrington School for assignment. The offer of re-employment stated that it was for a ten-day period and stated that if no answer was received by January 7 it would be assumed that the offer was refused. By letter of January 3, 1980 from counsel to the NHEA to NHEA counsel, the deadline for acceptance of employment was extended to January 14, 1980. No written contract was prepared.

At hearing, Mark Greenwood testified that he called the school upon receiving the December 28 letter and the person he called did not know the purpose of his call or anything about a contract. He asked to be contacted by Superintendent Clough who did not call. Greenwood indicated that he did not go to the school, did not seek to have his counsel discover the terms of employment, did not think he could leave his job to accept just any job with the school system and expected the school personnel to contact him. In addition, Mr. Greenwood testified that at the time of the hearing, having discovered that he was not being offered reinstatement as a teacher but was being offered a job as a special education teacher at the Middle School, he did not desire to return to the school since he was not fitted for that job and since he did not wish to disrupt the existing classroom situation. Greenwood testified that during the period of his non-employment by the school district, he was employed by Greenwood Construction Company, a Maine employer and received salary and benefits from them.

The Board finds from the facts presented that given the uncertainty of temporary order at the Superior Court, the Barrington School Board complied with the order of this Board and the court when it offered Greenwood re-employment on December 28, effective January 2. The amount of inaction and failure to inquire concerning that employment constituted a refusal to accept re-employment. Under the original order of this Board, there was no requirement that either discharged teacher accept re-employment. The Board finds that as of January 2, 1980, Mark Greenwood refused re-employment which was his right. The School Board, however, as of that date, had complied with the order of this Board and cannot be held liable for back pay following January 2, 1980.

On the question of back pay, the Board finds that the difference between the salary earned by Mark Greenwood, \$3,500.63 during the period September 1 through December 31, 1979, and the salary rate at the Barrington School for said period, \$4,187.00, is the proper measure of damages for back pay. The incidental expenses and costs of the job as a teacher and the job as a construction worker are found by the Board to cancel each other out. Therefore,

difference in pay between the job as a teacher and employment actually held is \$686.37 which the Board determines is due Mark Greenwood.

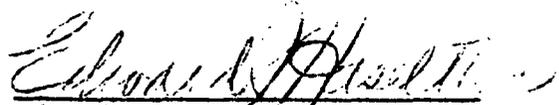
As to Constance Parsons, she did not appear at the February 26, 1980 hearing of the Board. However the Board received a communication from her dated March 10, 1980 to Chairman Edward Haseltine indicating that she intended to accept any offer for a teaching position during 1980 equivalent to those held by her during 1977-1979. The letter indicated that following February 29, 1980, Constance Parsons did not intend to return to teaching at the Barrington School because she learned from Mark Greenwood of the nature of the employment offered him.

The Board is unable to find that Constance Parsons in fact intended to return to her employment. As stated above, there was no requirement that she do so. Communications to the Board from her counsel, statements at hearings and the fact that she established and became a partner in another business for the 1979-1980 school year all contradict her stated intent to return. The Board finds, therefore, that there is insufficient evidence to establish that Constance Parsons intended to return to teach at any time during the 1979-1980 school year. Since she exercised her right under the law and the decision of this Board No. 79018 in not returning or intending to return, the Board need not reach the question of back pay as to Constance Parsons and in fact finds that since she did not intend to work, she is not entitled to any back pay.

ORDER

The Board issues the following order:

1. Having found that Mark Greenwood did not intend to return to work after January 2, 1980 and having found that the Barrington School complied with the orders of this Board as of that date, the Board finds that Mark Greenwood is awarded back pay in the amount of \$686.37.
2. Having found that Constance Parsons has not established her intent to return to work, the Board finds that no back pay is due Constance Parsons.
3. In all other respects, the previous orders of this Board are reaffirmed to the extent non inconsistent herewith.


Edward J. Haseltine, Chairman

Signed this 29th day of April, 1980

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Joseph B. Moriarty, David L. Mayhew, James C. Anderson present and voting. Board Executive Director, Evelyn LeBrun, and Board Counsel, Bradford Cook, also present.